

application: Assent of Assignee and Offer to Surrender Original Letters Patent and Certificate, Order for Title Report, and the Request for the Transfer of Original Drawings.

Applicant respectfully thanks the Examiner for the telephone interview conducted between the undersigned and the Examiner on or about October 5 and 7, 1999 in the parent application. The teaching of Sandell U.S. Patent No. 2,017,106 was discussed, and no agreement was reached.

In particular, the Examiner's rejection of claims in the parent application relies on the line from Sandell that, "it is evident that the size of the wire of which the fabric 13 is constructed and the mesh of this fabric may vary according to the purpose for which the waterproof sheet material may be utilized." Sandell, Col. 2, lines 47-50. All the pending claims of the present application include "termite barrier" limitations. Sandell does not disclose or suggest that "the purpose for which the waterproof sheet material may be utilized" is a termite barrier. Rather, Sandell discloses the problems with sheet waterproofing material, to which the Sandell structure is directed, as follows:

Flashing that is often referred to as interlocking wall flashing requires an excessive amount of space because it necessarily is embedded in the binding material between courses of masonry and an extremely wide joint is formed. It is often difficult to properly embed interlocking flashing in binding material because of the formation of the flashing and the binding material often fails to enter recesses provided therefor in the flashing.

Sandell, page 1, left col., lines 21-30. To address this problem, the purpose of the Sandell mesh size is discussed such as at page 2, left col., lines 16-24:

When used at such locations the material 10 is embedded in mortar 16 which is utilized to bind the adjacent courses of masonry together and this binding material enters the depressions 15 provided in the upper and lower surfaces of the material 10 between the ridges 14 thereof and acts to bond the flashing material and masonry structure together and prevent a relative movement therebetween in a horizontal plane.

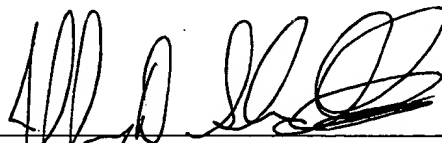
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Thus, a worker skilled in the art utilizing Sandell would realize that the wire size and mesh size must be large enough to form depressions and ridges which are transmitted **through the waterproofing fabric 11**, to thereby positively engage the masonry binding material. A worker skilled in the art would know that the termite barrier claimed has a wire size and mesh size which prevents the passage of termites, which is too small to realize the benefit of "positive engagement through waterproofing fabric" taught by Sandell. That is, a worker skilled in the art following the teaching of Sandell would have no motivation or incentive to make the mesh size small enough to prevent the passage of termites, because such a small size would ruin the benefit taught by Sandell. Claims 2, 3, 5 and 6 specifically require a size which a worker skilled in the art would immediately reject as too small to act as "positive engagement through waterproofing fabric" as taught by Sandell.

The application containing pending claims 1-8, 25, 29, 32 and 62 is in condition for allowance. Consideration and notice to that effect is respectfully requested. The Examiner is invited to contact the undersigned attorney at the number listed below if such a call would in any way facilitate examination of the application.

Respectfully submitted,

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